

Alaska Workers' Compensation Appeals Commission

Terry Parsons,
Appellant,

vs.

Craig City School District and Alaska
Municipal League Joint Insurance
Association,
Appellees.

Final Decision

Decision No. 293 December 20, 2021

AWCAC Appeal No. 21-002
AWCB Decision No. 21-0004
AWCB Case No. 200111621

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 21-0004, issued at Juneau, Alaska, on January 8, 2021, by southern panel members Kathryn Setzer, Chair, Bradley Austin, Member for Labor, and Christina Gilbert, Member for Industry.

Appearances: Terry Parsons, self-represented appellant; Rebecca Holdiman Miller, Holmes Weddle & Barcott, PC, for appellees, Craig City School District and Alaska Municipal League Joint Insurance Association.

Commission proceedings: Appeal filed March 11, 2021; briefing completed August 18, 2021; oral argument held on September 30, 2021.

Commissioners: James N. Rhodes, Amy M. Steele, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

1. Introduction.

Terry Parsons' workers' compensation claim has been before the Alaska Workers' Compensation Board (Board), Alaska Workers' Compensation Appeals Commission (Commission), and Alaska Supreme Court (Court) multiple times.¹ The Commission

¹ *Parsons v. Craig City Sch. Dist.*, Alaska Workers' Comp. Bd. Dec. No. 11-0140 (Sept. 13, 2011) (*Parsons I*); *Parsons v. Craig City Sch. Dist.*, Alaska Workers' Comp. App. Comm'n Dec. No. 168 (Aug. 30, 2012) (*Parsons II*); *Parsons v. Craig City Sch. Dist.*, Alaska Workers' Comp. Bd. Dec. No. 18-0013 (Feb. 7, 2018) (*Parsons III*); *Parsons v. Craig City Sch. Dist.*, Alaska Workers' Comp. App. Comm'n Dec. No. 255 (Nov. 26, 2018) (*Parsons IV*); and *Parsons v. Craig City Sch. Dist.*, Mem. Op. and J. No. 1748 (Alaska, Nov. 20, 2019) (*Parsons V*). *Parsons v. Craig City Sch. Dist.*, Alaska Workers' Comp. Bd. Dec. No. 21-0004 (Jan. 8, 2021) (*Parsons VI*) is the Board decision currently on appeal.

incorporates by reference the findings of fact in *Parsons I, III, and VI*. Certain facts are restated herein as necessary to support the Commission's conclusions. In this appeal, Ms. Parsons asserts the Board, in *Parsons VI*, erred in dismissing her most recent claim for medical and permanent total disability (PTD) benefits on the grounds of *res judicata*. After review of the briefs and hearing oral argument, the Commission now affirms the Board's decision.

2. *Factual background and proceedings.*²

On June 29, 2001, Ms. Parsons was injured when she was working as a custodian for Craig City School District (CCSD). Ms. Parsons was closing a pull down attic ladder when it came back down on Ms. Parsons, hitting her right arm and chest and knocking her to the floor. Soon after the injury, Ms. Parsons began to experience body complaints and symptoms encompassing almost every major part of her body, including pain in her head, neck, shoulders, arms, legs, chest, back, abdomen, pelvis, inflammation throughout her entire body, and diarrhea.³ Following the injury, Ms. Parsons treated with numerous doctors, and her medical history through 2010 is well detailed in *Parsons I, III, and VI*. As stated in *Parsons I*, Ms. Parsons continued to work for CCSD until June 2010, when she was terminated. She also operated her own cleaning business through January 2011.⁴

On September 2, 2010, Ms. Parsons filed a new claim relating to her June 29, 2001, work injury, amended on April 14, 2011, requesting temporary total disability (TTD), temporary partial disability (TPD), PTD, and permanent partial impairment (PPI) benefits, medical and related transportation costs, penalty, interest, and a finding of unfair or frivolous controversion. Ms. Parsons reported complaints and symptoms of body inflammation, and injuries to her arms, chest, head, right side, legs, and shoulders.⁵

² We make no factual findings. We state the facts as found by the Board, adding context by citation to the record with respect to matters that do not appear to be in dispute.

³ *Parsons I* at 3, No. 2.

⁴ *Id.* at 7, No. 42; at 9, No. 52.

⁵ *Id.* at 8, No. 46.

On January 13, 2011, orthopedic surgeon Lance N. Brigham, M.D., general surgeon Howard B. Kellogg, Jr., M.D., and psychiatrist Richard Carter, M.D., examined Ms. Parsons for an Employer's Independent Medical Evaluation and diagnosed: 1) low back sprain related to work injury, resolved, 2) right biceps contusion and left forearm contusion, related to work injury, resolved, 3) chest contusion, related to work injury, resolved, 4) complaints of cervical and right upper arm pain with non-physiologic findings, unrelated to work injury, 5) x-rays and magnetic resonance imaging (MRI) showing sclerosis of bilateral sacroiliac joints, 6) cholecystectomy, not work related, 7) severe pain behavior unrelated to any medical condition, 8) multiple abdominal complaints without objective findings, unrelated to work injury, and 9) major depressive episode. Drs. Brigham, Kellogg, and Carter opined there was no objective evidence to support any diagnosis other than marked pain behavior without positive orthopedic or neurologic findings, and opined Ms. Parsons had been medically stable with regard to her diagnosed conditions since February 28, 2002. Drs. Brigham, Kellogg, and Carter recommended no further treatment and found no restrictions to her return to work as a custodian.⁶

At the hearing on August 16, 2011, Marla Anderson testified as a witness for Ms. Parsons and CCSD cross-examined her about her account of Ms. Parsons' 2001 work injury.⁷

The Board, in *Parsons I*, found that Ms. Parsons failed to file anything in her case from November 30, 2001, until she filed a new claim on September 2, 2010. The Board held she took no action to prosecute her case between November 30, 2001, and September 2, 2010, but declined to dismiss her claim under AS 23.30.110(c).⁸ However, the Board denied her claim, finding that the 2001 work injury was not a substantial factor in her need for treatment.⁹ Ms. Parsons appealed this decision to the Commission, which reversed *Parsons I* in part, finding her claim was barred by AS 23.30.110(c), and affirmed

⁶ *Parsons I* at 8, No. 48.

⁷ *Parsons III* at 3, No. 2.

⁸ *Parsons I* at 9, No. 49; 17.

⁹ *Id.* at 22.

in part, finding the Board's denial of her claim was supported by substantial evidence in the record as a whole.¹⁰

On September 18, 2017, Ms. Parsons requested her claim be reopened in a letter to the Board which stated:

I wrote a letter a while back. And your office gave me a certain amount of time before closing my case. I couldn't get my info [sic] in time because of the stress and also sickness and meds [sic], I was on. The meds [sic] took their toll on me. . . . Please help me reopen my case. So I can live the rest of life with the help I deserved a long time ago.¹¹

On October 11, 2017, Ms. Parsons filed a June 7, 2010, notarized letter from Marla Anderson, in which Ms. Anderson stated she witnessed Ms. Parsons' 2001 work injury and provided her account of the injury.¹² The Board designee treated Ms. Parsons' September 18, 2017, letter as a petition and informed the parties that only a hearing panel could decide the petition.¹³

On October 19, 2017, CCSD requested dismissal of Ms. Parsons' September 18, 2017, petition.¹⁴

For evidence, Ms. Parsons, on October 30, 2017, stated in a letter to the Board:

I've been seen by numerous doctors and taken lots of medicines. Chiropractor Melendrea 7/23/01, Dr. Roper 29, 2003 [sic] diagnosed trigger points set up by accident. And Doctor Roper was giving me cortisone shots. Just like I am getting now, from my now treating [orthopedic] doctor Cape Fear [orthopedics]. Also I'm having to still see [a] rheumatology doctor because of accident. Wide spread nerve damage fibromyalgia which is noted from time again from doctors I'd seen along the way. The accident caused nerve damage [and] inflammation in my body, which I'll always have to take medicine for . . . I am asking the labor board to please open up my case. Cymbalta was medicine I took that caused me so many problems. I

¹⁰ *Parsons III* at 3, No. 4.

¹¹ *Parsons IV* at 11-12.

¹² *Id.*

¹³ *Id.*

¹⁴ *Parsons III* at 4, No. 8.

couldn't think right. I was put on disability on 12-01-2012. I have harassment case also, in my opinion!¹⁵

Ms. Parsons filed another letter on November 8, 2017, another letter stating:

I wouldn't have taken Cymbalta if not for pain I was in from accident. Also it was impossible for me to focus on case in 2011 [because] I was at my worse mentally and physically also financially not able. I wrote the letter for help thinking I was, when I got answer back for system I fell to pieces, my brain turned off all contact. . . . Please open my case and give me my benefits that I deserve.¹⁶

At the hearing on January 9, 2018, Ms. Parsons testified she was seeking justice for her denied claim for her 2001 work injury. She stated she was still receiving the same medical treatment for the same complaints caused by the 2001 work injury. However, she acknowledged she had no new opinion relating her past and current need for medical treatment for her ongoing complaints and symptoms to the 2001 work injury. Ms. Parsons further testified the stress of the 2001 work injury, the abusive work environment she experienced while working for CCSD, and the medication she was on to treat the 2001 work injury prevented her from timely petitioning for modification or reconsideration of *Parsons I*.¹⁷

The Board, in *Parsons III*, dismissed Ms. Parsons' petition to reopen her case with prejudice.¹⁸ Ms. Parsons appealed this decision to the Commission, which on November 26, 2018, affirmed *Parsons III's* dismissal of Ms. Parsons' petition.¹⁹

On November 20, 2019, the Court affirmed *Parsons IV*.²⁰

Ms. Parsons submitted new medical evidence she contended supported her claim her ongoing medical problems related to her 2001 work injury. On May 27, 2020, she complained of experiencing low back pain for several years which progressively worsened

¹⁵ *Parsons III* at 4, No. 9.

¹⁶ *Id.*, No. 10.

¹⁷ *Id.* at 6, No. 17.

¹⁸ *Id.* at 13.

¹⁹ *Parsons IV* at 21.

²⁰ *Parsons V*.

over time. The low back pain was primarily right-sided radiating into her right mid-calf with numbness; she occasionally experienced left-sided pain as well. Ashley Howell, PA-C, recommended an updated lumbar spine MRI.²¹ The lumbar MRI on June 3, 2020, showed mild lumbar spondylosis in combination with congenitally shortened lumbar pedicles resulting in mild to moderate spinal stenosis.²²

On June 10, 2020, Ms. Parsons reported experiencing right-sided low back pain radiating laterally to the right mid-calf with intermittent numbness for many years. PA-C Howell diagnosed low back and radicular pain in the right lower limb with imaging evidence of lumbar disc protrusion and annular tearing, and she recommended a right L5 transforaminal epidural steroid injection (ESI).²³ On June 24, 2020, Ms. Parsons underwent a right L5 transforaminal lumbar ESI.²⁴

On August 4, 2020, Ms. Parsons reported great right-sided symptom relief after the right L5 transforaminal ESI on June 24, 2020. She reported left-sided low back and buttock pain radiating laterally to her knee and chronic neck pain which worsened in the last three to four months. PA-C Howell recommended a cervical spine MRI.²⁵ The cervical spine MRI on August 17, 2020, revealed a broad-based disc herniation at C5-6 resulting in moderate central canal stenosis with cervical spondylosis contributing to bilateral foraminal stenosis and mild central canal stenosis at C6-7 secondary to posterior disc osteophyte complex.²⁶

On August 18, 2020, Ms. Parsons described worsening neck pain the last four months. The pain was centrally located and ached into her shoulders with intermittent pain radiating to her left elbow; she also had occipital headaches. PA-C Howell diagnosed neck and intermittent left arm pain with imaging evidence of cervical foraminal stenosis

²¹ *Parsons VI*, at 5, No. 17.

²² *Id.*, No. 18.

²³ *Id.*, No. 19.

²⁴ *Id.*, No. 20.

²⁵ *Id.*, No. 21.

²⁶ *Id.*, No. 22.

and bilateral occipital neuralgia. Ms. Parsons wanted to proceed with physical therapy to develop an at-home regimen and traction. PA-C Howell recommended a C7-T1 interlaminar ESI and ultrasound-guided bilateral nerve block and reassessment in two months.²⁷

On September 8, 2020, Ms. Parsons sought PTD, an unfair or frivolous controversion finding, a penalty for late paid compensation, and interest for her 2001 work injury. She described the nature of the injury or illness as joint pains and nerve damage when an attic ladder fell on her which “caused damages, yrs [sic] of stress an [sic] medicines numerous. [sic] that affected my body along with injury!” The reason Ms. Parsons stated she was filing the claim was because the “injury at work caused permanent total disability and I Terry M Parsons on disability because of injury that happened on the job 2001. Also new findings from injury neck damage, affected by body.”²⁸

On October 5, 2020, CCSD denied Ms. Parsons’ September 8, 2020, claim and all benefits based on *res judicata*,²⁹ and requested her September 8, 2020, claim be dismissed based upon *res judicata*.³⁰ CCSD requested an order for payment or reimbursement of attorney fees and costs incurred for defending against Employee’s September 8, 2020, claim. It contended Ms. Parsons frivolously attempted to litigate her claim after her claims for benefits were denied twice previously, both of which were upheld by the Commission and the Court.³¹

On October 14, 2020, at a prehearing conference, Ms. Parsons was informed she was responsible for obtaining, filing with the board, and serving on CCSD the medical opinions she intended to rely on to prove her claim. She was directed to contact her physician’s office to obtain copies of her medical records. Ms. Parsons was advised to

²⁷ *Parsons VI* at 5-6, No. 24.

²⁸ *Id.* at 6, No. 25; Exc. 87.

²⁹ *Parsons VI* at 6, No. 26.

³⁰ *Id.*

³¹ *Id.*

obtain a medical opinion regarding issues relating to her claims, including causation, prior to a hearing on her claim.³²

On November 2, 2020, Ms. Parsons requested a hearing on her September 8, 2020, claim by filing an Affidavit of Readiness for Hearing (ARH). She signed a sworn statement that she had completed necessary discovery, obtained necessary evidence, and was fully prepared for a hearing on the issues in her claim.³³

On November 12, 2020, CCSD opposed Ms. Parsons' November 2, 2020, ARH, contending it was barred by *res judicata*.³⁴

On November 30, 2020, Ms. Parsons filed a letter stating:

My name is Terry M. Parsons injured on the job in 2001 at Craig Elementary School. Heavy ladder fell from attic, badly contusion on both arms from heavy ladder. Also chest contusion related to accident not resolved. The accident caused severe pains. Severe medical condition that I deal with today. Multiple abdominal pains. Setting up trigger points, for pains all over my body. Along with fibromyalgia meds I'll always have to take shots in my hips, I had to take in Alaska, I have to have today. Also therapy which I am in right now. When it gets really bad like in Alaska I have cortisone shots. Because of trigger points and nerve damage from accident. Treatments from [orthopedics] and pains doctor on going from injury. While suffering from my injury my boss Greg Head was stressing me out on a daily basis. Also back problems and treatments on going today. Stress from all meds I had to take financial issues. Leaving my home in Alaska.

. . . . Findings low back sprain not resolved. Severe pain that has been treated with meds that covered up medical problems. Along with joints in lots of pain from injury that I suffered from today along with my back problem and neck. All my injuries contributing to fibromyalgia and joint and muscle pains body pains. Sanjay Garg, M.D., told me to leave his office and gave me my money back. Because I told him my pains from work injury. Medical records will show problems in the past spilling over into my today problems. . . .

The accident did all over body damage. That I still suffer from today, needing on going therapy and shots. I stay a nervous [wreck] worrying about my health. The whole aspect of my well being [sic]. My financial situation in ruins. Loved my job, before the accident that caused and

³² *Parsons VI* at 6, No. 27; R. 981-984.

³³ *Parsons VI* at 6, No. 28; R. 505.

³⁴ *Parsons VI* at 7, No. 30; R. 512-513.

causing defeat over my life in so many ways. Causing me to have to leave my home in Alaska that I love also.

Along with the letter, Employee filed evidence including the 2020 medical records included above, a June 7, 2010, statement from Mara Anderson, and a March 16, 2011, statement from Matthew Kingery.³⁵

In its hearing brief on December 8, 2020, CCSD cited AS 23.30.008(d), *Burke v. Raven Elec., Inc.*, 420 P.3d 1196 (Alaska 2018), and *Whaley v. Alaska Workers' Comp. Bd.*, 648 P.2d 955 (Alaska 1982) in support of its request for an order granting attorney fees and costs. It also requested a pre-litigation screening order be issued.³⁶

A hearing was held on December 15, 2020, to address CCSD's petition to dismiss Ms. Parsons' latest claim based on *res judicata* and its petition for attorney fees, claiming her new claim was frivolous.³⁷ In her defense, Ms. Parsons contended her prior claims were unfairly denied and she deserved justice because she was injured at work. She contended she knew her whole body was injured, but did not know the extent of the injuries until recently because she needs more medical treatment. Ms. Parsons contended her ongoing complaints and symptoms, which have worsened over time, were related to her work injury and she is unable to work due to her work injury. She contended the newly discovered medical evidence proved her claim and that the prior claims were unfairly denied. Ms. Parsons opposed a pre-litigation screening order because her prior claims were unfairly denied and her claim is supported by evidence. She contended it would be unfair to require her to pay CCSD's attorney fees because she believed her claim was supported by evidence and she could not afford to pay them.³⁸

The Board, on January 8, 2021, denied her claim as being barred by the doctrine of *res judicata* and dismissed her claim with prejudice.³⁹ The Board also denied CCSD's

³⁵ *Parsons VI* at 7, No. 31.

³⁶ *Parsons VI* at 7-8, No. 32; R. 609-624.

³⁷ Hr'g Tr. at 4:2-7; 6:1 – 7:3, Dec. 15, 2020.

³⁸ Hr'g Tr. at 11:14 – 15:6; 16:4-15; 18:5-9.

³⁹ *Parsons VI* at 13.

petition for an award of attorney fees.⁴⁰ Ms. Parsons timely appealed this decision to the Commission which held oral argument on September 30, 2021.

3. *Standard of review.*

The Board's findings of fact shall be upheld by the Commission on review if the Board's findings are supported by substantial evidence in light of the record as a whole.⁴¹ Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.⁴² "The question of whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law."⁴³ The weight given to witnesses' testimony, including medical testimony and reports, is the Board's decision to make and is, thus, conclusive. This is true even if the evidence is conflicting or susceptible to contrary conclusions.⁴⁴ The Board's conclusions with regard to credibility are binding on the Commission since the Board has the sole power to determine credibility of witnesses.⁴⁵

On questions of law and procedure, the Commission does not defer to the Board's conclusions, but exercises its independent judgment.⁴⁶ Abuse of discretion occurs when a decision is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive.⁴⁷

⁴⁰ *Parsons VI* at 13.

⁴¹ AS 23.30.128(b).

⁴² *See, e.g., Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

⁴³ *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054 at 6 (Aug. 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P. 2d 1187, 1188-1189 (Alaska 1984)).

⁴⁴ AS 23.30.122.

⁴⁵ AS 23.30.122; AS 23.30.128(b); *Sosa de Rosario v. Chenega Lodging*, 297 P.3d 139 (Alaska 2013).

⁴⁶ AS 23.30.128(b).

⁴⁷ *Sheehan v. Univ. of Alaska*, 700 P.2d 1295 (Alaska 1985) (*Sheehan*).

4. Discussion.

Ms. Parsons, in her appeal, seeks to have the Commission review her entire medical record and correct what she perceives to have been unfair treatment resulting from her workers' compensation injury in 2001. She believes her current need for medical treatment stems directly from that injury. Ms. Parsons has tried on several occasions to have the Board and the Commission understand and fix what to her has been a miscarriage of justice. After each request, the Board has held a full hearing to allow her to present new evidence which might connect the work injury to her present need for medical treatment. Unfortunately, Ms. Parsons has not been able to present substantial evidence from her medical doctors stating that the work injury in 2001 is a substantial factor in her current need for medical treatment. In the present appeal, she asks the Commission, once again, to reverse the Board and award her benefits.

The Commission is bound by the record and evidence presented to the Board. However, by statute, the Commission may not accept any new or additional evidence not presented to the Board. "[N]ew or additional evidence may not be received with respect to the appeal."⁴⁸ The Commission is restricted to reviewing the evidence presented to the Board from which it determines the findings of fact, and to ensure those findings of fact are supported by substantial evidence in the record as a whole. The Commission may also review the application of the law by the Board to its findings of fact.

CCSD filed a Motion to Exclude and Objection to October 1, 2021, Email from Appellant. CCSD objected to the email on October 1, 2021, in which Ms. Parsons indicated she had new evidence which she would file with the Commission. Even if Ms. Parsons had new evidence demonstrating that the 2001 injury is a substantial factor in her need for medical treatment, the Commission would not be able to consider it. Such evidence must be presented to the Board and be evaluated by it. However, to be clear, Ms. Parsons has not presented the Commission with such evidence. The objection by CCSD is noted, but there is no evidence from Ms. Parsons for the Commission to exclude. CCSD's motion is denied as part of this decision.

⁴⁸ AS 23.30.128(a).

a. *Is Ms. Parsons' new claim barred by res judicata?*

The Board, in *Parsons VI*, determined that the doctrine of *res judicata* barred Ms. Parsons' claim in 2020 because in *Parsons I*, the Board considered whether she was entitled to ongoing medical benefits, TTD, PTD, PPI, and other benefits and denied her claim for benefits. Ms. Parsons did not appeal this decision. Ms. Parsons, in 2017, petitioned the Board to reopen her case. In *Parsons III*, the Board denied Ms. Parsons' petition to reopen her case under the doctrine of *res judicata* because in *Parsons I* in 2011, she had a full and fair opportunity to litigate her claim, the Board issued a final decision, and the parties here were the same as the parties in 2011. The Board was the proper forum for consideration of her workers' compensation claim. Further, the Board, in *Parsons III*, granted CCSD's petition to dismiss Ms. Parsons' 2017 petition. Ms. Parsons appealed *Parsons III* to the Commission, which affirmed the Board on the issue of denial of benefits (*Parsons IV*). Ms. Parsons appealed this decision to the Court which affirmed the Commission's decision in a memorandum opinion (*Parsons V*).

The Court has outlined the elements of *res judicata* as being:

- (1) the prior judgment was a final judgment on the merits,
- (2) a court of competent jurisdiction rendered the prior judgment, and
- (3) the same cause of action and same parties or their privies were involved in both suits.⁴⁹

This doctrine applies to the issues decided in *Parsons III*. The Court has noted that the doctrine of collateral estoppel is incorporated within the doctrine of *res judicata*. This doctrine "relates to the effect of a prior judgment as conclusively determining disputed issues which arise again in a second proceeding."⁵⁰ The Court stated the factors to be considered are:

1. The plea of collateral estoppel must be asserted against a party or one in privity with a party to the first action;

⁴⁹ *Parsons V* at 3, citing *Robertson v. Am. Mech., Inc.*, 54 P.3d 777, 780 (Alaska 2002)(quoting *Tope v. Christianson*, 959 P.2d 1240, 1243 (Alaska 1998).

⁵⁰ *McKean v. Municipality of Anchorage*, 783 P.2d 1169, 1170 (Alaska 1989)(citing *Jeffries v. Glacier State Tel. Co.*, 604 P.2d 4, 8 n. 11 (Alaska 1979).

2. The issue to be precluded from relitigation by operation of the doctrine must be identical to that decided in the first action;
3. The issue in the first action must have been resolved by a final judgment on the merits.⁵¹

The Board, in *Parsons I*, was the appropriate forum for litigation of Ms. Parsons' workers' compensation claim. Both Ms. Parsons and CCSD were the parties before the Board in *Parsons I* and were the same parties before the Board in *Parsons III* and *Parsons VI* (the latter decision is the decision at issue here).

Ms. Parsons, in *Parsons I* and *Parsons III*, sought medical benefits and PTD benefits which she claimed arose out of her 2001 work injury. Both of these Board decisions denied her claims and these decisions were affirmed by the Commission. In her 2020 claim, Ms. Parsons again sought medical benefits and PTD.⁵² Although she submitted new medical records from 2020, none of these records supported her claim for PTD or ongoing medical benefits, which are the identical issues/benefits she claimed in 2001 and 2010, and which were heard and denied in *Parsons I* and *Parsons III*. Importantly, the Board found that none of the new medical records contained a statement by a medical doctor that the 2001 work injury was a substantial factor in her current need for medical treatment.

The decision issued in *Parsons I* was a final judgment on the merits and was appealed to the Commission, which affirmed the Board's denial of benefits for lack of evidence. Ms. Parsons was afforded another hearing in 2017 and, again, the Board denied Ms. Parsons' claim for medical and PTD benefits in *Parsons III*. Ms. Parsons appealed *Parsons III* to the Commission, which affirmed the Board's denial in *Parsons IV*. Ms. Parsons appealed *Parsons IV* to the Court, which in *Parsons V*, affirmed the Commission decision.

Ms. Parsons' 2020 claim sought the same benefits she sought in 2011 and 2017. The issues for the latest decision are precisely the same issues decided in *Parsons I* and

⁵¹ *McKean v. Municipality of Anchorage*, 783 P.2d 1169, 1171 (Alaska 1989) (Citing *Murray v. Feight*, 741 P.2d 1148, 1153 (Alaska 1987)).

⁵² Exc. 87.

Parsons III. Although Ms. Parsons filed new medical records from 2020, these records did not support a new claim for benefits as none of these records showed a link between the 2001 work injury and the need for treatment in 2020. Ms. Parsons' claims for medical benefits and PTD are still barred by the doctrine of *res judicata* for the reasons set forth.

b. What are the issues on appeal?

On April 6, 2021, the Commission accepted as points on appeal a statement from Ms. Parsons. She requested the Commission "reopen case, look at all medical files, consider all medical facts" because she was not improving. CCSD did not, at that time, file a response to this motion from Ms. Parsons.

Having now reviewed the motion from Ms. Parsons, the Commission finds that these points were considered by the Board in *Parsons I*, *Parsons III*, and *Parsons VI*. Other than the new medical records filed with the Board for consideration in *Parsons VI*, all of the other medical records and the allegations of stress on the job were fully addressed in *Parsons I* and *Parsons III*. Furthermore, the 2020 medical records contain no statement that links the 2001 injury to the current medical conditions. The Board, the Commission, and the Court found that the doctrine of *res judicata* barred or precluded the issues of past medical benefits and PTD from being reconsidered or heard again.

Although Ms. Parsons did file medical records from 2020 with her new claim, the Board found nothing in these records to support a new hearing. The Board stated, "the new medical evidence [Ms. Parsons] submitted for her September 8, 2020 claim failed to address whether her continuing pain complaints were caused by her work injury and whether her inability to work was due to the work injury."⁵³ The Commission, having reviewed the 2020 medical documents, finds the Board's conclusion denying her most recent claim is supported by substantial evidence in the record as a whole. Nothing in the new medical records links the 2001 work injury to her current complaints and/or need for medical care. The Commission also notes that Ms. Parsons has been advised on several occasions of the need for a medical opinion from a licensed physician that states clearly the 2001 work injury is a substantial factor in her need for current medical

⁵³ *Parsons VI* at 12.

treatment. None of the new medical evidence states her work injury is a substantial factor in her current need for medical treatment. The Board's decision granting CCSD's petition to dismiss the 2020 claim is affirmed.

c. Issue of pre-litigation screening order and petition for an award of attorney fees.

CCSD, before the Board, sought a pre-litigation screening order contending that Ms. Parsons' repeated attempts to relitigate her 2001 injury benefits were frivolous and cost CCSD ongoing litigation fees. The Board declined to consider this request at this time. The Board based its order, not on whether a pre-litigation screening order would be helpful or useful, but on the fact that the pre-hearing conference summary did not include a request for a pre-litigation screening order. Under the Board's regulations, "[e]xcept when the board or its designee determines that unusual and extenuating circumstances exist, the prehearing summary, if a prehearing was conducted and if applicable, governs the issues and the course of the hearing."⁵⁴ The prehearing conference summary identified the issues for hearing as CCSD's petition to dismiss Ms. Parsons' 2020 claim and its petition for attorney fees and costs. There is no mention of a request for a pre-litigation screening order.⁵⁵ Although CCSD did not cross-appeal this issue, the Commission notes the Board's order is supported by substantial evidence in the record.

CCSD also sought an award of attorney fees. AS 23.30.145 provides for payment of attorney fees to an injured worker who prevails on a claim. This statute does not provide for an award against an employee. AS 23.30.250(b) provides that after a finding by the Board that an injured worker obtained benefits based on false or misleading statement or representations for the purpose of obtaining benefits may be required to pay the employer's fees necessitated to obtain the finding of fraud. There is no evidence of fraud nor has fraud been alleged. This statute does not provide for attorney fees against Ms. Parsons here. AS 23.30.008(c) allows the Commission to make an award of

⁵⁴ 8 AAC 45.070(g).

⁵⁵ *Parsons VI* at 12.

attorney fees against an injured worker only upon a finding that the appeal was frivolous or unreasonable or taken in bad faith. Only the Commission, and not the Board, may award attorney fees under this statute.

The Board found that none of these statutes permit an award by the Board against an injured worker who in good faith, even if mistaken, pursues a claim (or multiple claims) for benefits. CCSD has not accused Ms. Parsons of fraudulent activity in pursuit of benefits, nor has it presented any evidence to support such an allegation. The Board found no jurisdiction by which it could award fees against Ms. Parsons. CCSD did not appeal this issue, but the Commission notes the Board's findings are supported by the law. The Board was correct in denying CCSD its request for attorney fees.

5. Conclusion.

The Board's decision in *Parsons VI* is AFFIRMED.

Date: 20 December 2021 Alaska Workers' Compensation Appeals Commission



Signed

James N. Rhodes, Appeals Commissioner

Signed

Amy M. Steele, Appeals Commissioner

Signed

Deirdre D. Ford, Chair

APPEAL PROCEDURES

This is a final decision. AS 23.30.128(e). It may be appealed to the Alaska Supreme Court. AS 23.30.129(a). If a party seeks review of this decision by the Alaska Supreme Court, a notice of appeal to the Alaska Supreme Court must be filed no later than 30 days after the date shown in the Commission's notice of distribution (the box below).

If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*.

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone: 907-264-0612

RECONSIDERATION

A party may ask the Commission to reconsider this decision by filing a motion for reconsideration in accordance with AS 23.30.128(f) and 8 AAC 57.230. The motion for reconsideration must be filed with the Commission no later than 30 days after the date shown in the Commission's notice of distribution (the box below). If a request for reconsideration of this final decision is filed on time with the Commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision No. 293 issued in the matter of *Terry Parsons v. Craig City School District and Alaska Municipal League Joint Insurance Association*, AWCAC Appeal No. 21-002, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on December 20, 2021.

Date: December 22, 2021



Signed

K. Morrison, Appeals Commission Clerk